

ADMINISTRATIVE RULES OF MONTANA

Title 36, Chapter 25, Sub-Chapter 3

STATE LAND LEASING

Coal Leasing Rules

36.25.301 DEFINITIONS (1) When used herein, unless a different meaning clearly appears from the context:

- (a) "Board" means the board of land commissioners of the state of Montana;
- (b) "Commercial quantities" means that quantity of coal which can be sold at profit in the commercial market;
- (c) "Coal" means and includes black or brownish-black solid fossil fuel which has been subjected to the natural process of coalification and which falls within the classification of coal by rank: I, anthracite; II, bituminous; III, sub-bituminous; IV, lignite;
- (d) "Department" means department of natural resources and conservation;
- (e) "Director" means director of the department of natural resources and conservation, chief administrative officer of the department;
- (f) "Foreign interests" means states of governmental subdivisions of states foreign to the United States, other than Canada or Mexico; business entities organized under the laws of any state foreign to the United States, other than Canada or Mexico; and persons who are citizens of any state foreign to the United States, other than Canada or Mexico;
- (g) "Lessee" means the person in whose name and coal lease appears of record in the offices of the department, whether such person be the original lessee or a subsequent assignee. The term "lessee" also includes, where the context of the rule may indicate, any person who is the apparent successful bidder for a coal lease but with whom a formal coal lease agreement has not been completed and finalized;
- (h) "Person" means any individual, firm, association or corporation or other legal entity;
- (i) "Qualified applicant" means any person who may become a qualified lessee as set forth herein;
- (j) "State" means the state of Montana;
- (k) "State lands" means all lands the leasing of which for coal purposes is under the jurisdiction of the board;
- (l) "Value" means the contract sales price as defined in 15-35-102 MCA. (History: 77-3-303, MCA; IMP, 77-3-301, MCA; NEW, 1979 MAR p. 734, Eff. 7/12/79; TRANS, 1996 MAR p. 2384.)

36.25.302 LANDS AVAILABLE FOR LEASING (1) State lands available for leasing by the board under these rules include state lands to which the title has vested in the state and in which the coal or coal rights are not reserved by the United States. Such state lands include those which have been sold but in which coal rights have been reserved, in whole or in part, whether such lands are under certificate of purchase or whether patents have been issued. The board in its discretion may withdraw any lands from leasing. In cases where the lands are under lease for grazing, agriculture or similar purposes, care will be taken in issuing the coal lease to protect the rights of the purchaser or surface lessee.

(2) If after a determination of the amount, location, and quality of the coal on the lands for lease, it appears that the extraction of the coal from such lands by strip mining methods would adversely affect the methods of recovery of deep minable coal from such operations on such lands in the future, the board may not issue a lease. (History: 77-3-303, MCA; IMP, 77-3-303, MCA; NEW, 1979 MAR p. 734, Eff. 7/12/79; TRANS, 1996 MAR p. 2384.)

36.25.303 WHO MAY LEASE FOR COAL -- QUALIFIED LESSEES(1) Any person, qualified under the constitution and laws of the state of Montana, except corporations, the majority of the stock of which is controlled by foreign interests, may lease state lands for coal purposes provided that:

(a) all corporations not incorporated in Montana must obtain a certificate of authority to transact business in this state from the secretary of state;

(b) no officer or employee of any agency of the executive department of state government who is required to inspect or examine field information in regard to prospecting for coal or the mining thereof, may take or hold such lease;

(c) the applicant, if a natural person, has reached the age of 18 years.

(2) Any person qualified to hold a coal lease on state lands may acquire, receive and hold more than one lease. (History: 77-3-303, MCA; IMP, 77-3-303, MCA; NEW, 1979 MAR p. 734, Eff. 7/12/79; TRANS, 1996 MAR p. 2384.)

36.25.304 PROCEDURES FOR ISSUE OF LEASE (1) The land shall be leased in as compact bodies as the form and areas of the tract held by the state and offered for lease will permit. No lease may embrace non-contiguous subdivisions of lands unless such subdivisions are within an area comprising not more than one square mile.

(2) No state coal lease may be issued until the coal resources and the surface of the tract to be leased have been evaluated as provided for in 77-3-312, MCA. No coal lease may be issued for less than the fair market value of the coal included under the lease.

(3) Tracts may be offered for lease pursuant to an application submitted by a qualified lessee, or by the department of its own volition.

(4) An application to have a tract offered for lease may be made at any time during the year on a form provided by the department.

(a) Such application shall contain the information called for therein, including an adequate and sufficient description of the lands sought to be leased.

(b) Such application shall be accompanied by a \$10.00 application fee. Applications not accompanied by the application fee will not be considered.

(5) Where more than one application is filed on any one tract, the department shall notify each person submitting an application subsequent to the first qualified application that there is a prior application for that tract. All subsequent application fees shall be returned. This is the only instance in which the application fee may be refunded.

(6) When sufficient applications have been received to warrant a sale, or at the director's discretion, a lease sale will be announced.

(a) Notice of a lease sale shall be given by publication in a trade journal of general circulation in the coal mining industry or in the major newspapers of general circulation within Montana each week for 4 weeks preceding the date of sale. The notice shall contain a list of the tracts being offered for lease, state the date of the lease sale, describe the bidding procedure and contain other information as is appropriate.

(b) The department shall maintain a master mailing list of prospective coal lessees who request, in writing, that their names be placed on such list; and concurrently with the publication of the notice of sale in the newspapers or trade journal, the board shall mail to each addressee on the master mailing list a copy of the notice of sale. However, such mailing shall not be deemed a legal prerequisite to a valid sale. Furthermore, the board shall have no liability to any person who may be inadvertently omitted in the mailing of such additional notices.

(c) Sales of state coal leases will be by competitive bidding. The board may call for bids on the percentage of royalty to be paid by the lessee, on a first year cash bonus to be paid by the lessee, or both; but unless the sales notices state that bids on the percentage of royalty will be called for on particular leases, all leases will be sold by bidding on the first year bonus alone.

(7) The board may require bidding to be by submission of written sealed bids, by oral bidding or by a combination of both. When sealed bids are required, the notices of sale will so state as to particular leases and will designate a date by which bids must be submitted. Where the sales notices do not state otherwise, all bidding will be oral.

(8) Subject to the board's right to reject any and all bids:

(a) When bidding is on a cash bonus basis, the lease will be awarded to the qualified applicant who submits a bid of the highest cash amount per acre;

(b) When bidding is on a percentage of royalty basis, the lease will be awarded to the qualified bidder who submits a bid of the largest percentage of royalty to be paid. No bid of less than 10% of the f.o.b. price of the coal prepared for shipment excluding that amount charged by the seller to pay taxes on production will be accepted;

(c) When bidding is on a cash bonus and percentage of royalty basis the board will determine which bid is to the best advantage of the state and award the lease accordingly.

(9) When sealed bids have been required and there is a tie for high bid, the highest bidder will be determined by oral auction among the tied bidders. If no oral bid is offered which is higher than the sealed bids, the highest bidder will be determined by lot. If no bid is made on a tract offered for lease, no lease will be awarded for that tract.

(10) The department may require a bid deposit in any amount it may determine, up to 10% of the appraised value of the coal offered for lease under any tract. When such a deposit is to be required, notice of the requirement shall be given in the notice of the lease sale.

(11) When bidding is by submission of sealed bids and a bid deposit is required the deposit shall accompany the bid. When bidding is oral and a bid deposit is required, the deposit must be submitted prior to the opening of bidding.

(12) An applicant or successful bidder shall pay a \$25.00 administrative fee for issuance of any coal lease. (History: 77-3-303, MCA; IMP, 77-3-303, MCA; NEW, 1979 MAR p. 734, Eff. 7/12/79; TRANS, 1996 MAR p. 2384.)

Rules 36.25.305 through 36.25.308 reserved

36.25.309 RENTALS (1) An annual money rental, shall be paid to the state for each coal lease at the rate of not less than \$2.00 for each acre of land leased. Rental for the first year of the lease shall include any sums in excess of \$2.00 per acre offered and accepted as a cash bonus for such first year rental. The first year rental shall be paid before issuance of the lease. Rental for each subsequent year of the lease shall be due and payable before the beginning of that year.

(2) The annual money rental shall be in addition to any royalty payment.

(3) No partial rental payment will be accepted, and the entire rental shall be considered unpaid until the full rental payment has been received. (History: 77-3-303, MCA; IMP, 77-3-303, MCA; NEW, 1979 MAR p. 734, Eff. 7/12/79; TRANS, 1996 MAR p. 2384.)

36.25.310 ROYALTIES (1) The lessee shall pay in cash a royalty on all coal produced from the leased premises at a rate of not less than 10% of the value of the coal.

(2) The value of the coal shall be determined in accordance with 15-35-109, MCA. This statute, in conjunction with 15-35-102(1), MCA, requires that the value of the coal for royalty purposes shall be either the price of the coal extracted and prepared for shipment f.o.b. mine, excluding that amount charged by the seller to pay taxes paid on production, or a price imputed by the department of revenue under 15-35-107, MCA, which authorizes the department of revenue to impute a value to the coal which approximates market value f.o.b. mine, under certain conditions including utilization of the coal by the operator and sales under a contract which is not an arm's length agreement.

(3) On or before the last day of each month every holder of a producing coal lease shall make a report to the department, on a form the department prescribes, showing the number of tons mined during the preceding calendar month, the price obtained therefor at the mine, the total amount of all sales and any additional information required by the department. The report shall be signed by the lessee or some responsible person having knowledge of the facts reported and be accompanied by payment of the royalty due the state for the preceding month as shown by the report.

(4) The lessee shall report any adjustments to the sales price of the coal which affect the sales price as previously reported in the monthly reports within 30 days of the adjustment. The royalty shall be adjusted accordingly. (History: 77-3-303, MCA; IMP, 77-3-316, MCA; NEW, 1979 MAR p. 734, Eff. 7/12/79; TRANS, 1996 MAR p. 2384.)

36.25.311 ASSIGNMENTS AND TRANSFERS (1) A lessee may assign any lease, either in whole or as to subdivisions of land embracing not less than 40 acres covered thereby, to any assignee qualified to be a lessee as provided under the law and these regulations. Such assignment is not, however, binding upon the state until filed with the department, accompanied by the required fees, together with proof of qualifications of the assignee as a lessee, and until the assignment is approved by the department. For the purpose of this rule, any government surveyed lot whether it contains 40 acres or more shall be assignable. The approval of any assignment so filed and supported may not be withheld in any case where the rights or interests of the state in the premises assigned will not, in the judgment of the board, be prejudiced thereby, and the decision is subject to appeal as provided by law. Until such an assignment is approved by the department, the lessee of record shall continue fully liable and responsible for all of the requirements and obligations of the lease.

(2) In the case of a partial assignment, i.e., assignment of a full interest in only a portion of the leased premises, the department shall issue a new lease or new leases, with the same expiration date as the original lease for the assigned acreage. A new ledger sheet or sheets shall be prepared and the original lease adjusted accordingly. The original lessee and the assignee(s) assume full liability for their respective leases.

(3) The lessee may assign an undivided, fractional interest in any lease, either as to the whole of the leased premises or as to any portion thereof, by assigning title to the acreage in question to himself and the assignee. The assignment must show the respective shares of interest

and may be approved by the director as a transfer of title only without recognition of any assignment of lease obligations and responsibilities.

(4) All other assignments of coal leases or interests therein are subject to approval by the board and are binding upon the state in the discretion of the board.

(5) Assignments involving reservations of overriding royalties or other interests by assignee are approved by the director as a transfer of title only and without recognition of such overriding royalties or interests. Such reservations do not affect the validity of the transfer of title.

(6) An assignment or transfer must be on the form currently approved by the board. Evidence of transfers by operation of law should be in the form of a certified copy of the appropriate court order or decree or similar document, such as letters of administration to personal representatives, decree of distribution, executor's deed or sheriff's deed.

(7) The board may recognize any transfer by operation of law to an unqualified lessee for a period of time no longer than one year and only for the purpose of the further transfer of the interest.

(8) The director shall notify the parties to any assignment or other transfer submitted for approval or non-approval thereof. (History: 77-3-303, MCA; IMP, 77-3-303, MCA; NEW, 1979 MAR p. 734, Eff. 7/12/79; TRANS, 1996 MAR p. 2384.)

Rule 36.25.312 reserved

36.25.313 IMPROVEMENTS OF FORMER LESSEE (1) When a coal mining lease is applied for on land where mining operations have been carried on by a former lessee and there are surface or underground improvements on the land used at the former operations, disposition of the improvements satisfactory to the board shall be made before a new lease is issued. If the owner of such improvement desires to sell the same to the new lessee, then the new lessee shall pay him the reasonable value thereof to the extent they are suitable for the new mining operations. If they fail to agree on the value of such improvements, then such value may be ascertained and fixed by 3 arbitrators, one of whom shall be appointed by the owner of the improvements, one by the new lessee and the third by the 2 arbitrators so appointed.

(2) The reasonable compensation that the arbitrators may fix for their services shall be paid in equal shares by the owner of the improvements and the new lessee. The value of the improvements so ascertained and fixed is binding on both parties. However, if either party is dissatisfied with the valuation so fixed, he may within 10 days appeal from their decision to the department. The department shall examine the improvements and its decision shall be final. The department shall charge and collect the actual cost of the reexamination to the owner and the new lessee in such proportion as in its judgment justice demands.

(3) Before the new lease is issued, the applicant shall show to the satisfaction of the board that he has paid the owner for the improvements as agreed upon between them or as fixed by the aforesaid arbitrators or the department, that he has tendered payment as so fixed, or that the owner desires to remove his improvements. (History: 77-3-303, MCA; IMP, 77-3-303, MCA; NEW, 1979 MAR p. 734, Eff. 7/12/79; TRANS, 1996 MAR p. 2384.)

36.25.314 SURRENDER OF LEASE (1) The lease may be terminated at any time by mutual consent of the lessee and the department. Such termination shall not excuse the lessee of his duty to perform obligations which have accrued or become fixed before the date of such

termination. Termination shall be effective at a date agreed upon by the lessee and the department. (History: 77-3-303, MCA; IMP, 77-3-303, MCA; NEW, 1979 MAR p.734, Eff. 7/12/79; TRANS, 1996 MAR p. 2384.)

36.25.315 FORFEITURE, CANCELLATION, AND TERMINATION OF LEASES (1)

If the lessee fails to comply with any provisions of state law relating to coal leases, the provisions of these rules, or the provisions of its coal lease, the department shall give lessee written notice specifying such failure. Lessee shall have a period of 60 days following such notice to cure the failure so specified. Failure to so cure may result in cancellation of the lease by the board. Any lessee whose lease has been so canceled has the right to a hearing pursuant to the Montana Administrative Procedure Act and the regulations of the department.

(2) Upon a finding at a hearing held in accordance with the Montana Administrative Procedure Act, that a lessee has contracted with any foreign interest for the sale of coal, the lease shall automatically terminate. (History: 77-3-303, MCA; IMP, 77-3-303, MCA; NEW, 1979 MAR p. 734, Eff. 7/12/79; TRANS, 1996 MAR p. 2384.)

36.25.316 OPERATING AGREEMENTS (1) Any lessee may enter into agreements with another person for mining and other operations involving coal production on state lands under his lease or leases. However, no such operating agreements are in any way binding upon the state until filed with and approved by the department. (History: 77-3-303, MCA; IMP, 77-3-303, MCA; NEW, 1979 MAR p. 734, Eff. 7/12/79; TRANS, 1996 MAR p. 2384.)

36.25.317 OPERATIONS ON STATE LEASES (1) A coal lease on state lands is subject to the conditions that the coal must be mined, handled, and marketed in a manner that will prevent as far as possible all waste of coal and that the mining operations shall be carried on in a systematic and orderly manner that will not make subsequent mining operations more difficult or expensive. A violation of any of these conditions is grounds for the cancellation of the lease.

(2) Every coal lease is conditioned upon compliance with the Montana Strip and Underground Mine and Reclamation Act and the Strip Mining Siting Act, Title 82, chapter 4, parts 2 and 1, respectively, MCA, and any other applicable laws and regulations of the state of Montana.

(3) The lessee shall allow the department to make as many inspections of the leased premises as it deems necessary and shall carry out at the lessee's expense all reasonable orders and requirements of the department relative to the prevention of waste and preservation of property. On the failure of the lessee to comply with this paragraph, the department shall have the right, together with other recourse herein provided, to enter on the property, repair damages, and prevent waste at the lessee's expense. These remedies are not exclusive and do not limit the state's other remedies of law.

(4) Upon the termination for any cause of any lease, the lessee must within 6 months after the date of the termination remove all machinery, fixtures, improvements, buildings and equipment belonging to him from the premises. Any machinery, fixtures, improvements, buildings and equipment belonging to any lessee and not removed within 6 months after the date of termination of the lease shall, upon the expiration of the 6 month period, become the property of the state. In special circumstances the department may allow a reasonable extension of time for removal. However, the claimant of such property of the state for salvage or otherwise, and the removal of such property from the lands, or any of such actions shall not relieve the lessee of

his obligations to properly reclaim the land and restore the premises to their condition prior to mining operations as far as reasonably possible, as prescribed by Title 82, chapter 4, parts 1 and 2 MCA. If the land is leased to a new lessee prior to the expiration of the above 6 month period the former lessee may sell the improvements to the new lessee. If the new lessee and former lessee cannot agree upon the proper compensation for the improvements arbitration procedures as provided by these rules must be started prior to the end of the 6 month period. (History: 77-3-303, MCA; IMP, 77-3-303, MCA; NEW, 1979 MAR p. 734, Eff. 7/12/79; TRANS, 1996 MAR p. 2384.)

Rule 36.25.318 reserved

36.25.319 HEARINGS AND APPEALS (1) It is the desire and intent of the board that any lessee or prospective lessee be given full and adequate opportunity to be heard with respect to any matter affecting his interests in any particular lease. Any hearing will be conducted informally, without adherence to the strict rules of evidence of a court of law.

(2) A verbatim written record of any hearing or rehearing will be made if any party in interest so requires not less than 5 days prior to the day set for hearing and if the requesting party agrees to pay the cost thereof, including the cost of the original copy of the transcript. The transcript shall become a part of the case record and remain on file with the department. The party requesting such verbatim record may be required to deposit, in advance, the anticipated cost of the record. Any transcript must be certified as true, correct, and complete by the parties before it becomes part of the record. (History: 77-3-303, MCA; IMP, 77-3-303, MCA; NEW, 1979 MAR p. 734, Eff. 7/12/79; TRANS, 1996 MAR p. 2384.)

36.25.320 RECORDS (1) The board shall keep a record of all of its meetings in the form of minutes of such meetings, reflecting all matters considered by the board, decisions made and actions taken with respect to the leasing or possible leasing of state lands for coal. Such minutes shall be open to public inspection during normal office hours of the department. With respect to any hearing held by the board on application of any affected lessee, the minutes shall show only that such hearing was held, the nature of the hearing, and the decision reached by the board.

(2) A separate file and record shall be kept on each hearing held on application of a lessee or prospective lessee. Such separate file shall contain the written application for the hearing, a copy of the notice of the hearing, evidence of the mailing thereof, and the transcript of the hearing, if prepared.

(3) The department shall maintain a record of publication of notices of all lease sales. Such record shall consist of published copies of such notices or affidavits by each printer or publisher of the newspaper or his foreman or principal clerk, annexed to a copy of the document or notice. The record shall specify the times when and the paper in which the publication was made. (History: 77-3-303, MCA; IMP, 77-3-303, MCA; NEW, 1979 MAR p. 734, Eff. 7/12/79; TRANS, 1996 MAR p. 2384.)

36.25.321 FEES The department shall assess the following fees:

- (1) for application for coal lease - \$10.00;
- (2) for issuance of each coal lease - \$25.00;
- (3) for filing each assignment affecting a coal lease, or interest therein, of whatever nature - \$10.00;

(4) for royalties on coal mined for private use not exceeding 30 tons of 2,000 pounds - \$5.00. (History: 77-3-303, MCA; IMP, 77-3-303, MCA; NEW, 1979 MAR p. 734, Eff. 7/12/79; TRANS, 1996 MAR p. 2384.)

36.25.322 AMENDMENT OF RULES AND REGULATIONS (1) These rules and regulations may be altered, changed or modified at any time by action of the board in accordance with the Montana Administrative Procedure Act. No alteration, change or modification of the rules will alter, change or modify the provisions of existing leases with regard to term, rental or royalty. (History: 77-3-303, MCA; IMP, 77-3-303, MCA; NEW, 1979 MAR p. 734, Eff. 7/12/79; TRANS, 1996 MAR p. 2384.)

36.25.323 IMPAIRMENT OF CONTRACT (1) Nothing in these rules may be construed to impair the obligations of any contract entered into before the effective date of Chapter 358, L. 1975. (History: 77-3-303, MCA; IMP, 77-3-303, MCA; NEW, 1979 MAR p. 734, Eff. 7/12/79; TRANS, 1996 MAR p. 2384.)

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